

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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RONNIE COLE, 91-A-9212,

Plaintiff,

08-CV-699A(Sc)

-VS-

DEFENDANTS' CROSS-  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT

FISCHER, KIRKPATRICK, SCHUMACHER,  
STICH, VENETOZZI, BELLAMY,  
SHRODER, SKELLY, MALLOY, MCGUIRE,  
HODGES, MEHNERT, TROTTER and  
NIXON,

Defendants.

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**PLEASE TAKE NOTICE**, that the defendants (with the exception of defendant Hodges, who is represented by his own counsel) (the "Defendants"), by their attorney, Andrew M. Cuomo, Attorney General of the State of New York, Michael J. Russo, Assistant Attorney General, of counsel, will move this Court before the Hon. Hugh B. Scott, at the United States Courthouse, 68 Court Street, Buffalo, New York, at a time and date set by the Court, for an order granting partial summary judgment in Defendants' favor and against plaintiff, dismissing Plaintiff's cause of action alleging due process violations at a disciplinary hearing conducted in connection with a misbehavior report issued against him on May 14, 2008, on the grounds set forth in the papers listed below, which are being submitted in support of the Cross-Motion for Summary Judgment and in opposition to the Plaintiff's summary judgment.

**PLEASE TAKE FURTHER NOTICE** that the motion is based upon the Declarations of Captain S. Casaceli and Michael J. Russo, AAA, both dated December 17, 2009, the

Defendants' Statement of Undisputed Facts, and their Memorandum of Law.

**NOTICE TO *PRO SE* LITIGANTS OPPOSING SUMMARY JUDGMENT**

Plaintiff is hereby advised that the defendant has asked the Court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. THE CLAIMS PLAINTIFF ASSERTS IN THE COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF HE DOES NOT RESPOND TO THIS MOTION by filing his own sworn affidavits or other papers as required by Rule 56(e). An affidavit is a sworn statement of fact based on personal knowledge that would be admissible in evidence in a trial.

In short, Rule 56 provides that plaintiff may NOT oppose summary judgment simply by relying on the allegations in the complaint. Rather, plaintiff must submit evidence, such as witness statements or documents, countering the facts asserted by defendant and raising issues of fact for trial. Any witness statements, which may include plaintiff's own statements, must be in the form of affidavits. Plaintiff may file and serve affidavits that were prepared specifically in response to defendant's motion for summary judgment.

Any issue of fact that plaintiff wishes to raise in opposition to the motion for summary judgment must be supported by affidavits or by other documentary evidence contradicting the facts asserted by defendant. If plaintiff does not respond to the motion for summary judgment on time with affidavits or documentary evidence contradicting the facts asserted by defendant, the Court may accept defendant's factual assertions as true. Judgment may then be entered in defendants' favor without a trial.

Pursuant to Rules 7.1(e) and 56.1 of the Local Rules of Civil Procedure for the Western District of New York, plaintiff is required to file and serve the following papers in opposition to this motion: (1) a memorandum of law containing relevant factual and legal argument; (2) one or more affidavits in opposition to the motion; and (3) a separate, short, and concise statement of the material facts as to which plaintiff contends there exists a genuine issue to be tried, followed by citation to admissible evidence. In the absence of such a statement by plaintiff, all material facts set forth in defendant's statement of material facts not in dispute will be deemed admitted. A copy of the Local Rules to which reference has been made may be obtained from the Clerk's Office of the Court.

If plaintiff has any questions, he may direct them to the *Pro Se* office.

Plaintiff must file and serve any supplemental affidavits or materials in opposition to defendant's motion no later than the date they are due as provided in Rule 56.1(e) of the Local Rules of Civil Procedure for the Western District of New York.

**DATED:** Buffalo, New York  
December 17, 2009

Andrew M. Cuomo  
Attorney General of the  
State of New York  
Attorney for Defendants

By:

s/ Michael J. Russo

MICHAEL J. RUSSO  
Assistant Attorney General  
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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2009, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, and mailed the foregoing to the non-CM/ECF participant on this case:

Ronnie Cole (91-A-9212)  
Mohawk Correctional Facility  
6100 School Road, P.O. Box 8451  
Rome, NY 13442

ANDREW M. CUOMO

Attorney General of the  
State of New York  
Attorney for Defendants

BY:

S/Michael J. Russo, AAG

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